

STATE OF WASHINGTON
GAMBLING COMMISSION

In the Matter of the Revocation of the)
Certification to Operate Gambling)
Activities of:)
)
Kevin A. Davis)
Maple Falls, Washington,)
)
Class III Employee.)
_____)

NO. CR 2012-01400

**NOTICE OF ADMINISTRATIVE
CHARGES, AND OPPORTUNITY FOR
AN ADMINISTRATIVE HEARING**

I.

The Washington State Gambling Commission issued Kevin A. Davis certification¹ number 69-28727, authorizing Class III Employee activity.

The Commission issued this certification, which expires on September 23, 2013, subject to the certified employee's compliance with state gambling laws and Commission rules.

II.

Rick Day, Director of the Washington State Gambling Commission, charges the Class III employee with the following violations of the Nooksack Tribal/State Compact, Washington State Gambling Act, 9.46 RCW, and WAC Title 230.

SUMMARY:

Kevin A. Davis Jr. currently holds a Class III Certification (certification) from the Washington State Gambling Commission to work at the Nooksack River Casino. On September 21, 2012, Mr. Davis was charged with 1st Degree Burglary, two counts of 2nd Degree Assault, Tampering with a Witness, and 3rd Degree Malicious Mischief. The charges pending stem from an incident where Mr. Davis forced his way into an ex-girlfriend's home, damaged her property, and assaulted her. The Nooksack Tribal Gaming Agency has suspended his tribal license, pending investigation.

FACTS:

1) On September 19, 2012, a Washington State Gambling Commission Special Agent (agent) was assigned to Mr. Davis' file for a suitability investigation after being notified by the Nooksack Tribal Gaming Agency (NTGA) of his pending criminal history. The NTGA also stated that they suspended Mr. Davis' license pending investigation.

¹ Class III Certification is issued to employees working at tribal Casinos. The certification authorizes similar activities as the Card Room Employee (CRE) license issued to individuals working at commercial house-banked card rooms. By submitting a transfer form and fees, holders of a Class III Certification may convert their certification to a CRE license.

2) Mr. Davis first applied for certification in 2008 to work in the Nooksack River Casino as table games dealer, and he has maintained his certification ever since.

3) As part of the investigation, the agent requested certified court documents from Whatcom County Superior Court. On September 21, 2012, an Information was filed in Whatcom County Superior Court, which is summarized as follows:

- Count I- First Degree Burglary. On or about September 18, 2012, Mr. Davis entered or remained unlawfully in the building of Jessica Hartle with the intent to commit a crime against her or her property. Mr. Davis was armed with a deadly weapon and/or did intentionally assault her. This is a class A felony and is a crime of domestic violence.
- Count II- Second Degree Assault. Sometime between March 1, 2012, and March 31, 2012, Mr. Davis intentionally assaulted Ms. Hartle and recklessly inflicted substantial bodily injury. This is a class B felony and is a crime of domestic violence.
- Count III- Second Degree Assault. On or about September 18, 2012, Mr. Davis intentionally assaulted Ms. Hartle by strangulation. This is a class B felony and is a crime of domestic violence.
- Count IV- Tampering with a Witness. On or about September 18, 2012, Mr. Davis attempted to induce Ms. Hartle to testify falsely or unlawfully withhold testimony or absent herself from an official proceeding, and/or to withhold from a law enforcement agency information relevant to a criminal investigation. This is a class C felony and is a crime of domestic violence.
- Count V- 3rd Degree Malicious Mischief. On or about September 18, 2012, Mr. Davis knowingly and maliciously caused physical damage in an amount not exceeding \$50 to the property of another. This is a gross misdemeanor and is a crime of domestic violence.

4) On September 18, 2012, an Affidavit of Probable Cause Determination was filed in Whatcom County Superior Court. The following is a summary of the document:

- On September 18, 2012, at approximately 5:30 a.m., Whatcom County Sheriff's office was called for a "physical disturbance."
- Ms. Hartle had called 911 to report that Mr. Davis had forced his way into her home, damaged property, and assaulted her. She said between 12:30 a.m. and 5:25 a.m. Mr. Davis had been at her home with her permission.
- During that time, Mr. Davis was drinking heavily and became loud and belligerent. Ms. Hartle kicked Mr. Davis out of her home.
- Soon after, Mr. Davis kicked in her front door and was in her home.

- Mr. Davis lunged at her, grabbed her by the throat and shoved her back against the wall, holding her there. He squeezed his hand around her throat as he held her against the wall, and she was unable to breathe.
- The Deputy noted the damage done to Ms. Hartle's doorframe was consistent with the damage caused by a door being forced open. The Deputy also noted that Ms. Hartle had three small children that were inside the home during the assault.
- Ms. Hartle told the Deputy that in March 2012, Mr. Davis assaulted her. She said he was angry with her and head-butted her in the face, breaking her nose. He shoved her, she fell to the floor and Mr. Davis stomped on her back while wearing shoes. Ms. Hartle said she did not report the assault because she was afraid of Mr. Davis.
- While Deputies were trying to locate Mr. Davis, he called Ms. Hartle again and asked her not to press charges. At approximately 9:20 a.m., Mr. Davis was arrested and booked into Whatcom County Jail.

5) On September 24, 2012, an Amended Information was filed in Whatcom County Superior Court to correct the cites used pertaining to the domestic violence indicators in the original charges.

6) On October 11, 2012, after receiving the above documents, the agent called and spoke with Susan Epp, NTGA. The agent confirmed that TGA has suspended Mr. Davis' license and staff would be recommending that his certification be revoked.

7) On October 19, 2012, Mr. Davis made bond from the Whatcom County Jail, his next court appearance is scheduled for November 19, 2012.

VIOLATIONS:

Nooksack Tribal/State Compact

Section 5(d) states SGA may revoke a State Certification for any reason it deems to be in the public interest. These reasons include when the applicant:

5(d)(i) has violated, failed or refused to comply with the provisions, requirements, conditions, limitations or duties imposed by chapter 9.46 RCW and any amendments thereto, or any rules adopted by the SGA, or any provision of a Tribal-State Compact;

5(d)(vi) fails to prove by clear and convincing evidence that he is qualified in accordance with the provisions of this section; and

5(d)(vii) is the subject of current prosecution or pending charges for any of the offenses listed in sub-section (iv)² of this section.

² Section 5(d)(iv) of the compact lists the following violations: has been convicted of, or forfeited bond upon a charge of, or pleaded guilty to, forgery, larceny, extortion, conspiracy to defraud, willful failure to make required payments or reports to any Tribal, State, or U.S. governmental agency at any level, or filing false reports therewith, or of any similar offense or offenses, or

RCW 9.46.075 Denial, suspension, or revocation of certification, application, or permit

The Commission may deny an application, or suspend or revoke any license or permit issued by it, for any reason or reasons, it deems to be in the public interest. These reasons shall include, but not be limited to, cases wherein the applicant or licensee, or any person with any interest therein: (The following subsections apply.)

(1) Has violated, failed or refused to comply with the provisions, requirements, conditions, limitations or duties imposed by chapter 9.46 RCW and any amendments thereto, or any rules adopted by the Commission pursuant thereto, or when a violation of any provision of chapter 9.46 RCW, or any Commission rule, has occurred upon any premises occupied or operated by any such person or over which he or she has substantial control.

(8) Fails to prove, by clear and convincing evidence, that he is qualified in accordance with the provisions of this chapter.

(9) Is subject to current prosecution or pending charges, or a conviction, which is under appeal, for any of the offenses included under subsection (4)³ of this section: PROVIDED, that at the request of an applicant for an original license, the commission may defer decision upon the application during the pendency of such prosecution or appeal.

WAC 230-03-085 Denying, suspending, or revoking an application, license or permit

We may deny, suspend, or revoke any application, license or permit, when the applicant, certified employee, or anyone holding a substantial interest in the applicant's or certified employee's business or organization:

(The following subsections apply.)

(1) Commits any act that constitutes grounds for denying, suspending, or revoking licenses or permits under RCW 9.46.075.

(8) Poses a threat to the effective regulation of gambling, or creates or increases the likelihood of unfair or illegal practices, methods, and activities in the conduct of gambling activities, as demonstrated by:

- (a) Prior activities; and
- (b) Criminal record;
- (c) Reputation; or
- (d) Habits.

of bribing or otherwise unlawfully influencing a public official or employee of the Tribe, any state or United States, or of any crime, whether a felony or misdemeanor involving any gambling activity or physical harm to individuals or involving moral turpitude; provided however, crimes, other than gambling, of a Tribal member relating to the exercise or defense of Tribal treaty rights shall not be grounds for revocation, suspension or denial;

³ **RCW 9.46.075(4)** The commission may deny an application, or suspend or revoke any license or permit issued by it, for any reason or reasons, it deems to be in the public interest. These reasons shall include, but not be limited to, cases wherein the applicant or licensee, or any person with any interest therein: (4) Has been convicted of, or forfeited bond upon a charge of, or pleaded guilty to, forgery, larceny, extortion, conspiracy to defraud, willful failure to make required payments or reports to a governmental agency at any level, or filing false reports therewith, or of any similar offense or offenses, or of bribing or otherwise unlawfully influencing a public official or employee of any state or the United States, or of any crime, whether a felony or misdemeanor involving any gambling activity or physical harm to individuals or involving moral turpitude;

RCW 9.46.153(1) Applicants and licensees-Responsibilities and duties

It shall be the affirmative responsibility of each applicant and licensee to establish by clear and convincing evidence the necessary qualifications for licensure of each person required to be qualified under this chapter, as well as the qualifications of the facility in which the licensed activity will be conducted. The certified employee's pending criminal charges demonstrate that the Class III employee poses a threat to the effective regulation of gambling, creates, or increases the likelihood of unfair or illegal practices, methods, and activities in the conduct of gambling activities.

Based on his pending criminal charges, Mr. Davis has failed to establish clearly and convincingly that he is qualified for certification, as required by RCW 9.46.153(1). As a result, there are grounds to revoke Kevin A. Davis' certification based on the Nooksack Tribal/State Compact, RCW 9.46.075(1), (8), (9), and WAC 230-03-085(1), and (8).

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III.

Jurisdiction of this proceeding is based on 9.46 RCW, Gambling, chapter 34.05 RCW, the Administrative Procedure Act, and WAC Title 230.

The certified employee will have the opportunity to have a hearing on the alleged violations.

In order to have a hearing or discuss settlement options, the enclosed request for hearing must be completed and returned to the Gambling Commission within 23 days from the date of the mailing of this notice.

Based on RCW 34.05.440, failure to return a request for hearing will result in the entry of a default order REVOKING your certification.

STATE OF WASHINGTON)
) ss.
COUNTY OF THURSTON)

Rick Day, being duly sworn on oath, says: That he has read this Notice of Administrative Charges and Opportunity for An Adjudicative Proceeding, knows the contents of it, believes it to be true, that he is the Director of the Washington State Gambling Commission, and in that capacity has executed said Notice.



RICK DAY, DIRECTOR

SUBSCRIBED AND SWORN TO before me
this 9 day of November, 2012.

Maureen Prehall
NOTARY PUBLIC in and for the State of
Washington residing at Thurston County
My Commission expires on December 2, 2015

STATE OF WASHINGTON)
)
COUNTY OF THURSTON)

I certify I have this day served a copy of the document upon all parties of record in the proceeding by mailing a copy, property addressed with postage prepaid, by regular and certified mail to each party to the proceeding or his or her attorney or authorized agent.

Dated at Olympia, Washington this 9 day of November, 2012
Margaret
Protal

